Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 85-660

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

THE STATE OF COLORADO,

Petitioner,

v.

FRANCIS BARRY CONNELLY,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF COLORADO

REPLY BRIEF

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ARGUMENT

A FINDING OF INCOMPETENCE TO PROCEED TO TRIAL IS NOT DISPOSITIVE OF THE VOLUNTARINESS OF A PRIOR CONFESSION OR THE EFFECTIVENESS OF A PRIOR WAIVER OF MIRANDA RIGHTS.

In his brief on the merits, the defendant asserts that the undisputed evidence established that he suffered from an impaired mental condition, schizophrenia, and was incompetent to proceed to trial at the time of his confession. He argues that this evidence necessarily indicates that he lacked the capacity to make a voluntary confession or effectively waive his Miranda rights. While he does not assert that finding a defendant incompetent to proceed procedurally bars a determination that a prior confession was voluntary, he clearly asserts that one cannot be incompetent to

proceed and act either voluntarily or knowingly and intelligently.

Reference to the defendant's mental condition merely reformulates, without answering, the question whether his confession and waiver were voluntary because the issue before the court is whether "involuntary" in the constitutional sense means anything other than induced by official coercion or impermissible official interference with the exercise of free will. If mental disturbance alone can be sufficient to render a confession or waiver constitutionally involuntary, whether or not official action caused it, the trial court's holding on voluntariness is supported by the record. However, the assertion that Dr. Metzner's testimony of the defendant's incompetence to proceed precludes the possibility that he could

make any knowing and intelligent waiver is unsupported in law and contrary to the doctor's own findings. If the constitutional standard for competence to proceed were actually inconsistent with any knowing or intelligent waiver, this record would raise more questions about the determination of incompetence than about the defendant's capacity to waive.

It is precisely Dr. Metzner's finding about the defendant's cognitive capabilities and the narrowness of the trial court's suppression ruling resulting from it that raises the Miranda-waiver issue in this court. The undisputed psychiatric testimony was that the defendant's mental disorder "really affect[ed] his volitional abilities . . . [but] did not significantly impair his cognitive abilities. . ." (J.A. 25). The doctor said that the defendant probably

had the capacity to know that he was being read his Miranda rights and that he had those rights (J.A. 26). All four times Metzner talked with the defendant he could "relate accurately those cognitive facts, historical data," (J.A. 34-35) and Metzner could not say that the defendant was unable to do so at the time of his confession as well (J.A. 35). The trial court limited its ruling to voluntariness and held both the confession and waiver involuntary because the defendant "would do anything to follow the mandate of God" (J.A. 48-49). Given the clear distinction drawn by the expert between volitional and cognitive capacity, the court never found that the defendant lacked the capacity to (or did not) understand his Miranda rights or the consequences of waiving them, and its ruling would not have been supported by the record if it had.

Similarly, Dr. Metzner, solely on the basis of whose report the defendant was held incompetent to proceed from October 1983 until March 1984, gave his reasons for finding the defendant incompetent. The doctor felt that the defendant was "coming in and out of psychoses," and therefore the doctor "wasn't very confident that he could consistently relate accurate information" (J.A. 35). By his February 1984 exam he felt confident that the defendant could do so consistently. Although this court has rarely commented on the question of competency, it has held that due process of law prohibits trial of someone who cannot consult rationally with his counsel and rationally and factually understand the proceedings, because in such a case his condition would effectively preclude operation of the adversary process. See Drope v. Missouri, 420 U.S. 162 (1975);

Pate v. Robinson, 383 U.S. 375 (1966); Dusky v. United States, 362 U.S. 402 (1960); Bishop v. United States, 350 U.S. 961 (1956). Whether or not the doctor's concerns would have required a finding of constitutional incompetence to proceed, his own explanation shows that his decision was based on an assessment of the defendant's capacity to assist his counsel consistently over an extended period of time, not any incapacity to understand or because of any general diagnosis of schizophrenia or impaired mental condition.

The defendant's approach suggests that the court blur rather than refine and clarify the standards for waiver of constitutional rights. It would effectively abdicate to psychological experts important questions of constitutional law. Whether the defendant

had the capacity to waive all kinds of constitutional trial rights is not at issue since he need only have been aware of the right he was waiving and the consequences of waiving it. See Moran v. Burbine, 106 S.Ct. 1135, 1141 (1986). What a defendant must know and waive in order to remove the presumption that he was compelled by custodial interrogation to incriminate himself is contained in the Miranda warnings, which were designed for that purpose. Moran v. Burbine, 106 S.Ct. at 1142. Because all of the evidence in the record indicated that the defendant's capacity to understand his Miranda rights was not affected by his mental disorder, the trial court held only that auditory hallucinations deprived him of a meaningful choice and his waiver was therefore involuntary (J.A. 48-49).

Unless the term "voluntary" as applied to waiver of a known constitutional right takes into account influences on a defendant's will not taken into account by the due process voluntariness standard, this court's resolution of the first question on appeal should also resolve the second.

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